

To: Eric Urban[eurban@mt.gov]
From: Laidlaw, Tina
Sent: Mon 4/29/2013 4:18:57 PM
Subject: FW: Request for Response Letter and Initial Comments on Revised NNS Package

From: McInnis, Amanda [<mailto:Amanda.McInnis@hdrinc.com>]
Sent: Friday, April 19, 2013 10:00 AM
To: Laidlaw, Tina; Suplee, Mike
Cc: Mumford, David; Craig Woolard
Subject: Request for Response Letter and Initial Comments on Revised NNS Package

Tina—

You had asked about whether the League had comments on the latest rule package that you forwarded. We have asked George for a formal response letter to our comment letter dated August 6th. Many of the questions asked in the letter aren't answered in the package, and I'd like to understand a little more what the response to each issue is. Here's some of my initial response to what's in the latest version of the package, for what it's worth.

MDEQ12

●□□□□□□□□ Table 12-A

- We would like some explanation for why the assessment standard for nuisance algae was reduced from 150 mg/m² to 125 mg/m².
- We would like to discuss the nutrient season on the Yellowstone River. Its listed as August 1 to October 31. The Lower Yellowstone Site Specific Criteria document provides an explanation for why MDEQ has used this season, but we would like to discuss a more flexible season that better fits with reuse.
- We would like an explanation for why the phosphorus standard on the Clark Fork was reduced to 24 ug/L from 39 ug/L. Also MDEQ should provide the citation listed, as it's not included in the bibliography.

●□□□□□□□□ Section 1.1

- MDEQ should provide the rationale for choosing 4 mg/L TN and 0.07 mg/L TP as their definition of the limits of technology. To our knowledge there are very limited cold weather installations that are capable of achieving 4 mg/L TN consistently.
- We would like MDEQ to add language about current permit limits staying in place while site specific criteria are being developed.

- Section 2.0

- In the bottom of the first paragraph on page 2, it says “revised effluent limits will be included with the permit during the next permit cycle” We would like to change the work next to subsequent. The way these rules are structured with the limits potentially going down every three years does not allow the permittee adequate response time to save the capital to finance improvements with every permit cycle. In some cases, we would like to negotiate compliance schedules that extend beyond the current permit cycle.
- We would like the opportunity to discuss the timeframe for the general variance levels going down so utilities can better plan for the future.

- Section 2.2

- The text was revised to add “The demonstration must consider effects on the downstream waterbody including effects from the non-target nutrient.” We would like to add language that specifically states that point sources will not be held liable for non point source impairment issues. Some of the language and the adaptive management plan approach described in the State of Wisconsin Rules, NR 217.18 seem to get at this issue in a more constructive way. This is an issue we brought up in the August letter and in our first comment letter back in February of 2012 on the rules.

- Section 3.0

- The text was revised to add “Individual variances may be established for a period not to exceed 20 years and must be reviewed by the Department every three years” We would like to add “However, the variance may be renewed after 20 years if the conditions under which it was established remain the same.”

Guidance Draft 7.3

- Section 4.0

- “The demonstration must consider impacts on the downstream waterbody including effects of the non-target nutrient,” was added. Again, it appears MDEQ is attempting to hold point sources liable for non-point source impairment issues. While we understand that we need to look at the effects of our effluent on downstream sources, to do this without looking at the same

time on how non-point sources are contributing doesn't really solve the problem. To solve this issue with trading also doesn't solve the problem. In many cases, when we are looking farther downstream and looking at multiple load sources, even completely removing the point sources wouldn't address the impairment. We would like MDEQ to revise the text to address this issue.

- Page 13, last paragraph the text "and it is possible that a general variance level would be adjusted for one nutrient and not another" was removed. We would like to understand why this was removed. It seems like it would be attractive to be able to lower the variance level for the more limiting nutrient. Please explain.

- □□□□□□□□ Section 4.2

- The new section "Protection of Downstream Beneficial Uses" was added. Again, this entire section has the potential to hold point sources responsible for non-point source related nutrient issues. We suggest it either be removed entirely or revised to make clear that point sources are not responsible for non-point source generated impairments.

Again, these are just my comments on my initial read through.

Amanda